

**U.S. Senate  
Republican Policy  
Committee**

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## EPA's Enhanced Monitoring Rule:

### *Poster Child for Congressional Review*

On March 29, 1995, the United States Senate passed S. 219, as amended, by a vote of 100 to zero. S. 219, as passed, establishes a 45-day opportunity for congressional review of all non-routine federal agency final rules, and all significant final rules issued since November 30, 1994. Should S. 219 become law, the Environmental Protection Agency's final "enhanced monitoring rule"-- due to be issued on or before April 30, 1995 -- could be the first prospective final rule to be the subject of congressional disapproval under the new procedure.

**Summary:** The EPA's enhanced monitoring rule is a prime example of a federal bureaucracy expanding legislative authority to produce an extremely expensive, highly redundant, and impossibly complex regulatory scheme. The rule would require every stationary source that meets the EPA's size threshold (30 percent of the size of a "major source"), from factories to dry cleaners, to install very expensive monitors to continuously test the effectiveness of the expensive pollution control devices already installed at that site. EPA has remained insensitive to the defects of its proposed rule, issued in October 1993, and has sent a substantially unaltered draft final rule to the OMB for final approval.

**Background:** The EPA is under a court-ordered deadline of April 30, 1995, to issue a final rule imposing "enhanced monitoring" requirements on stationary sources to improve compliance with emissions limits on pollutants, primarily nitrogen oxides, sulfur oxides, and carbon monoxide. The requirement was imposed by section 114(a)(3) of the Clean Air Act Amendments of 1990, which required the EPA to promulgate the rules by November 15, 1992.

**Rule Is Tip of Iceberg:** The October 1993 proposed "enhanced monitoring rule" comprised 107 pages in the *Federal Register* (October 22, 1993), not including a "reference document" of an additional 439 pages that was not published, but was "made



available." The draft final rule that is currently at OMB awaiting final review is of comparable size. In addition, EPA is expected to "make available" over 300 additional "protocols" (at 10 to 30 pages each) that will not be published in the *Federal Register* nor be subject to the public notice and comment requirements of the Administrative Procedures Act -- nor the 45-day congressional review legislation. Each protocol describes EPA's preferred methodology, installation, and equipment for each source-type (e.g., a gas turbine) or pollutant (e.g., nitrogen oxides). For several of the 13 protocols already "made available," specifications are set forth without any supporting data indicating the specifications can be met in real-world applications.

**EPA Exceeds Statutory Authority:** In section 114(a)(3) of the 1990 Act, Congress required that a certification must be submitted to EPA by a stationary source to explain how that source was to enhance the monitoring of its air emissions. The legislation provided that the certification must contain a statement of "whether compliance is continuous or intermittent." EPA has taken this oblique legislative reference and churned out a regulatory mandate that essentially requires that all these stationary sources must use continuous emissions monitors.

**Backdoor Increase in Regulatory Standards:** By essentially requiring continuous emissions monitors, EPA has effectively made many existing pollution limits more stringent. Many Clean Air Act emissions standards, developed by rulemakings with public notice and comment, set maximum average emissions levels for smokestacks or other point sources. The enhanced monitoring rule would keep these same maximum average emissions levels and make them ceilings, so that a facility would be breaking the law if it ever emits, at any given moment, higher emissions than the average level permitted by existing regulations. EPA did not include in its cost estimate economic penalties from reduced operations or more expensive control technology required to further reduce emissions to the new continuous levels.

**Marginal Benefits:** Little, if any, additional emissions reductions are expected to occur as a result of this rule. Compliance by industry and business with the Clean Air Act emissions standards has improved substantially over the past two decades. Moreover, the EPA regulations implementing the "permits" title of the 1990 Amendments already contain draconian requirements for monitoring emissions and for determining compliance. However, in its enhanced monitoring proposed rule, EPA claimed as benefits many of the emissions reductions that have already been achieved (EPA calculated emissions exceedences based on a 1981 survey) or have been already credited to justify the final EPA permits rule.

**But, Billions of Dollars in Costs:** EPA estimates the rule will require industry to install 20,000 to 30,000 monitoring devices, each of which must be protected inside air conditioned, pressurized enclosures mounted on stack platforms, linked to computers, and maintained and operated by skilled personnel. The petroleum industry estimates that each continuous emissions monitor and associated equipment will cost \$250,000 to \$350,000 to purchase and install, and another \$30,000 to \$40,000 a year to operate.

In addition, the rule will impose enormous new burdens on state clean air regulators, who will have to wade through the tons of paper and gigabytes of electronic data generated by the 20,000 to 30,000 monitors running 24 hours a day. It is unfortunate that this rule will not be subject to the Unfunded Mandate Reform Act's economic impact analysis and consultation requirements, which do not take effect until 1996.